

NIXON PEABODY LLP

ATTORNEYS AT LAW

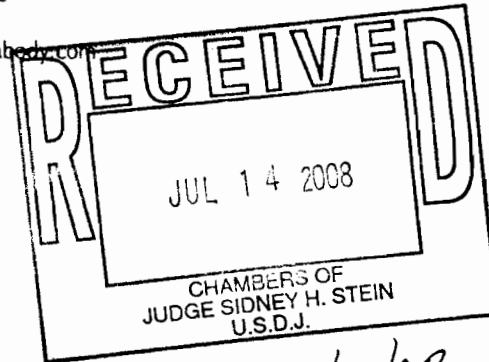
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July 14, 2008



VIA FACSIMILE

Hon. Sidney H. Stein
United States District Judge
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street, Room 1010
New York, New York.
Fax: (212) 805-7924

MEMO ENDORSED

RE: Stevens v. Kerioth Corp.

Dear Judge Stein:

08 Civ. 1491 (SHS)

7/15/08
Plt's dep. is to take place at 437 Madison in Nixon Peabody's office commencing at 10 A.M. Last day for discovery remains at 9/12; parties conf. remain at 10 A.M. Trial set for October 14 at 9:30 A.M.
So ordered.
S. H. Stein
U.S.D.J.

I also apologize for bothering the Court, with an issue which I fully anticipated would be resolved between the parties. However, Mr. Trinko does not accurately portray the exchange between the parties, and therefore a response is necessary.

We have attempted to cooperate with plaintiff, so that his deposition can go forward in accordance with this Court's order. However, we are once again stymied by plaintiff's supposed unavailability for the majority of the dates prior to the Court's deadline. In an email dated July 10, Mr. Trinko indicated that his client was only available three days prior to the Court's deadline - July 21, July 24, and July 25. (A copy of the July 10 email is annexed hereto). While Mr. Trinko indicated that he preferred not to go forward on July 24 or 25, he did indicate that plaintiff was available for deposition on those dates. During a subsequent conversation, I indicated to Mr. Trinko that I was unavailable the week of July 21, due to an arbitration which I am engaged in that is going forward that week. However, I agreed to make an effort to find another attorney from my office to cover plaintiff's deposition. Moreover, I suggested to Mr. Trinko that, if we could not agree upon a date within the Court's deadline, we could approach the Court with a date certain in the following week and request an extension up to that time.

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After finding an attorney available to take plaintiff's deposition, I provided Mr. Trinko with four proposed dates for plaintiff's deposition. Though we were unavailable on either July 18 or 21, two of the proposed dates – July 24 and 25 – were previously proposed by Mr. Trinko. To the extent Mr. Trinko's vacation plans conflict with these dates, I also proposed July 22 as a possible date. However, rather than respond to my letter or make any attempt to meet and confer, Mr. Trinko has sought the intervention of the Court in this scheduling matter.

After the deposition was originally noticed for July 9, plaintiff's counsel represented that plaintiff was unavailable until September. Now directed by the Court to appear, plaintiff, though now available in July, again attempts to limit defendants' opportunity to take his deposition. Despite my unavailability on any of the dates proposed by plaintiff, I have worked to accommodate plaintiff by finding another attorney to take plaintiff's deposition. Moreover, of the three dates originally proposed by plaintiff, we have agreed to two.

Under these circumstances, Mr. Trinko's suggestion of "posturing" along with his citing of ethical considerations and professional courtesies is wholly inappropriate. Accordingly, we request that plaintiff's deposition be scheduled for one of the two dates mutually agreed upon by the parties, July 24 or July 25.

Respectfully,



Thomas M. Mealiffe

Cc:
Curtis V. Trinko
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Mealiffe, Thomas

From: Curtis V. Trinko [ctrinko@trinko.com]
Sent: Thursday, July 10, 2008 6:10 PM
To: Mealiffe, Thomas
Subject: Stevens / Kerioth

TO: Tom Mealiffe
FROM: Curt Trinko
RE: Stevens / Kerioth
DATED: July 10, 2008

Tom,

As you know, we have to schedule the Deposition of Alan Stevens as soon as possible during the next two weeks. As I stated to you, it is impossible for Mr. Stevens to reschedule the business commitments that he has for the next week. However, in the following week, he could make July 21, 24 and/or 25 available for such a deposition to be conducted in New York. (Aaron and I discussed holding the deposition at your midtown Manhattan offices). I told you that I would strongly prefer holding the deposition on Monday, July 21, since I already have booked a vacation flight on July 23rd, which will be difficult and costly to change. Please let me know as soon as possible what arrangements are possible for this deposition.

Best regards,

Curt

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